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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova

Report for State party * **

* In accordance with the decision taken by the Subcommittee at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

** In accordance with article 16, paragraph 1, of the Optional Protocol, this report was sent confidentially to the State party on 9 January 2013. The State party gave notification of its decision to publish the report on 10 March 2014, in accordance with article 16, paragraph 2, of the Optional Protocol.

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I. Introduction

1. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Optional Protocol" or "OPCAT"), members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Subcommittee") visited the Republic of Moldova from1 to 4 October 2012.

2. The Subcommittee was represented by the following members: Mari Amos, Petros Michaelides (Head of the delegation), Christian Pross and Fortuné Gaetan Zongo.

3. The Subcommittee was assisted by two human rights officers and one security officer from the Office of the High Commissioner for Human Rights (OHCHR), as well as three local interpreters.

4. The objective of the visit was to provide advisory services and technical assistance to the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter NPM), as specified in article 11 (b) of the Optional Protocol. The visit was also intended to assist in building the capacity and reinforcing the mandate of the NPM of Moldova. To that end, this report sets out recommendations and comments in accordance with article 11 (b), subparagraph (iv), of the Optional Protocol.

5. During their visit, the members of the Subcommittee met with officials from the Government of Moldova, with representatives of the Parliament and with civil society organizations, among others (Annex I). Since one of the main reasons for the visit was to provide the national preventive mechanism with advisory assistance, a number of meetings were held with the members and staff of the mechanism itself in order to discuss its working methods and explore ways of strengthening and increasing its effectiveness, as explained below. Members of the Subcommittee also visited, together with the NPM, two places of detention in Chisinau (Annex II).

6. The Subcommittee wishes to express its gratitude to the authorities for the facilitation of the visit. It also wishes to express its thanks to the Office of the United Nations Development Programme (UNDP) in Moldova, in particular the OHCHR Human Rights Advisor, Mr. Claude Cahn, for the support in arranging for this mission to take place.

II. The national preventive mechanism

7. The Republic of Moldova ratified the Optional Protocol on 24 July 2006. With the Protocol's entry into force on 22 June 2006, the State assumed the obligation of designating or establishing a national mechanism to prevent torture within one year's limit.[1] The modalities for the creation and functioning of the NPM of Moldova were determined by the Law no. 200-XVI from 26 July 2007 and the Decision of the Moldovan Parliament no. 201-XVI from 26 July 2007, which modified the Regulations concerning the Centre for Human Rights. On 8 February 2008, the Subcommittee was officially notified[2] on the designation

[1] Article 17 OPCAT.

[2] Note Verbale No.83 of the Permanent Mission of the Republic of Moldova to the United Nations Office in Geneva.

of the Centre for Human Rights (the National Human Rights Institution), in combination with the Consultative Council, as a NPM of Moldova.

8. The Subcommittee welcomes the efforts of the authorities to combat and prevent torture and ill-treatment, *inter alia*, through amendments of the Criminal Code and the comprehensive Justice Sector Reform Strategy for 2011-2016. Furthermore, the Subcommittee commends the State party for placing the elimination and prevention of torture as one of the priorities in its National Human Rights Action Plan 2011–2014 and creating a Working Group to draft amendments to the current Law on Parliamentary Advocates, which currently constitutes the legislative framework for the work of the NPM.

9. Whilst welcoming the review of the legislation on NPM, the Subcommittee regrets, however, that it got hold of the new draft law only after it finalized its visit to the Republic of Moldova and, thus, could not realize its advisory mandate to the full capacity during the visit. The Subcommittee welcomes the assurances of the Minister of Justice, Mr. Efrim, that the Subcommittee's views on the draft legislation will be taken into account and the full compliance of the law with the OPCAT requirements will be ensured.

10. In accordance with its mandate, as set out in article 11 (b), subparagraphs (ii) and (iii), the Subcommittee will address a separate confidential report to the NPM of Moldova.

III. Main legal, structural and institutional obstacles faced by the current national preventive mechanism

11. *Legal basis.* The ambiguous legal basis was identified as one of the main obstacles hindering the efficiency of the national preventive mechanism. Actually, there is a contradiction between article 232 of the Law on Ombudsmen and paragraph 41 of the Regulations of the Centre for Human Rights, which generates various interpretations on who fulfils the mandate of the NPM. In practice, the Subcommittee observed that this ambiguity jeopardizes significantly the collegial work and information sharing, and often results in conflicting positions of the Centre for Human Rights *versus* the Consultative Council.

12. **Accordingly, the Subcommittee recommends that the State party eliminate current legal ambiguity through the pertinent amendments of the Law on Parliamentary Advocates (see also Chapter IV of the present report).**

13. *Structure and resources.* The Subcommittee noted the absence of a separate structure and a distinct budget line for the functions of the NPM within the Centre for Human Rights. In addition, the Subcommittee learned that the proposal to create a specialized subunit for torture prevention within the Centre for Human Rights was pending consideration in the Parliament since July 2011. In this connection, the Subcommittee recalls that structural problems of that nature undermine the functional independence of the NPM and, thus, place the State party in conflict with articles 18.1 and 18.3 of the Optional Protocol.

14. Pursuant to paragraph 39 of the Regulations of the Centre, its budget covers only the preventive visits and the fees of external experts from different fields, not the honoraria of the members of the Consultative Council, leading, thus, to a *de facto* unequal treatment among members of the national mechanism. Moreover, the Consultative Council is not supported by the administrative team, which jeopardizes the quality of reports, the motivation of the members and, in the long term, the credibility of the NPM as a whole.

15. At the same time, staff members of the Centre for Human Rights deal not only with NPM-related issues but also with a broad range of other activities under Ombudsmen

Office mandate, such as individual complaints, which may undermine the preventive focus of the NPM work.

16. Whilst welcoming assurances of the Ministry of Justice that, despite current economic crisis, the budget of the Ombudsmen Office will be increased, the Subcommittee stresses that only financial autonomy of the NPM can guarantee its functional independence. In addition, the Subcommittee learned that the authorities rejected a proposal to review salary grades of the employees of the Centre for Human Rights and the request to allow certain salary supplements for activity under high health and life risk conditions.

17. **The Subcommittee reminds that the provision of adequate financial and human resources constitutes a legal obligation of the State party under article 18.3 of the OPCAT. Within Ombudsman Plus model freely chosen by the State party, a specialized subunit dedicated only and exclusively to the preventive mandate of the NPM shall be created. The Subcommittee recommends that the State party allocate to the NPM a separate and adequate budget to allow for its complete financial and operational autonomy[3]. Moreover, the Subcommittee recommends that the State party improve the working conditions by providing honorarium and administrative support team to the members of the Consultative Council, as well as by reviewing the salary scale of the employees of the subunit on prevention of the Centre for Human Rights.**

18. *Independence and expertise.* Although it is comprised of the Consultative Council together with the Centre for Human Rights, the NPM is legally placed under the Chair of the Parliamentary Advocate (Ombudsman). Hence, the support team, employed by the Ombudsman office, is dependent on his instructions and not on the collegial body of the NPM. This controverts article 18.1 of OPCAT setting out that States Parties shall guarantee the independence of the NPM personnel. Moreover, the NPM as a collegial body does not have access to the budget, which is administered solely by the Centre for Human Rights, and, thus, cannot decide independently on the use of resources, according to the priorities and evaluation of needs (which should be made by the NPM as a collegial body).

19. The Subcommittee was informed that, allegedly, the procedure used to appoint the members of the Consultative Council has not been entirely transparent and inclusive. Also, a limited number of candidatures was received which indicates that more efforts need to be made to publicly announce the vacancies, disseminate information and raise visibility of the selection process. The Subcommittee notes that any perceived or real conflict of interests of the selection panel could cause damage to the legitimacy of the elections and, thus, should be avoided.

20. **The Subcommittee highlights that it is the responsibility of the State party to ensure that the elected members of the NPM have the required capabilities and professional knowledge,[4] and that the NPM enjoys complete financial and operational autonomy when carrying out its functions under the OPCAT[5]. The Subcommittee recommends that the State party**

(a) Ensure independence of the NPM Secretariat to support effectively the activities of the collegial body of the NPM;

(b) Allow the NPM as a collegial body to have budgetary independence by ensuring access to a budget of its own;

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[3] CAT/OP/12/5, para.12.

[4] Article 18 OPCAT.

[5] Para.12 Guidelines on NPM, CAT/OP/12/5.

(c) Take steps to ensure that the procedure used for the selection of members is pubiic, transparent and inclusive; with a view to selecting the most qualified and experienced persons.

21. *Institutional visibility.* The Subcommittee realizes that the NPM is a relatively new institution in the Republic of Moldova. However, it is concerned that authorities in charge of places of detention, persons deprived of liberty and civil society do not perceive the Consultative Council together with the Centre for Human Rights as a single collegial body that constiutes the Moldovan NPM. The Subcommittee is of the view that the lack of visibility and clarity may have a detrimental effect on the efficiency and credibility of the NPM. By way of example, a number of interlocutors with whom the Subcommittee met during the visit conveyed their negative perception of the collaboration between both bodies integrating the NPM and highlighted the lack of transparency about priorities and activities of the NPM as a whole. As a concrete example, there is no distinction when the Centre for Human Rights issues reports or transmits its recommendations/views to the authorities as the Office of the Ombudsman and when it is doing so in its capacity of the NPM.

22. Furthermore, annual reports to the authorities and the Parliament are not being directed on behalf of the collegial body of NPM, but from the Centre for Human Rights. It is also of concern to the Subcommittee that the previous practice of discussion of the annual report of the Centre for Human Rights in the Parliament, in a joint session with the civil society, has lapsed.

23. **The Subcommittee recommends that the State party take steps to help position the national preventive mechanism as a key collegial agency in the country's system for preventing torture and ill-treatment and to contribute to the recognition of its role. That could be achieved, *inter alia*, by public awareness campaigns and other promotional activities. In addition, it recommends that the State party publish and widely disseminate the Annual Reports of the NPM, including by transmitting them to the Subcommittee. Finally, the Subcommittee recommends that the Annual Reports be presented and discussed in the Parliament.**

24. *Coordination mechanism.* During meetings with the Subcommittee, the representatives of the authorities were unable to provide a concrete example of a recommendation addressed to them by the NPM and/or implemented. This implies that these authorities have not yet entered into a meaningful dialogue with the NPM to address systemic issues and root causes of torture and ill-treatment. That corroborates the views expressed by some members of the NPM that their recommendations to the authorities are "often listened to but rarely heard", especially when financial resources are required for the implementation.

25. The Subcommittee learned that the Moldovan Government had enacted in November 2008 a law on local monitoring commissions comprised of civil society representatives.[6] However, the authorities recognized that, in reality, these commissions are not functional and hardly any of them can be regarded as a truly effective way of prevention of torture and ill-treatment. The Subcommittee is of the view that the proliferation of structures in charge of prevention of torture does not necessarily lead to greater results and, in the absence of coordination, may contribute to inefficient use of available resources and, to some extent, may weaken the NPM mandate.

[6] The Law on civil control of respect for human rights in institutions which detain persons (No.235); Regulations of the functioning and organization of local civil society monitoring commissions (No.286).

26. Moreover, the Subcommittee is concerned about the absence of an established coordination mechanism between and among different State party's entities working in the field of prevention of torture, such as the State apparatus of judicial oversight, the General Prosecutor Office, relevant Ministries, Local Commissions on one hand and the NPM on the other. The Subcommittee wishes to stress that an absence of platform for coordination could be an indicator of a lack of coherent and well defined national strategy to prevent torture and ill-treatment.

27. **The Subcommittee is of the view that only collaborative work could lessen the likelihood of torture and ill-treatment, as it will establish mutually reinforcing means of oversight and avoid duplication of efforts. The Subcommittee recommends that the State party establish coordination among relevant entities and institutions, in order to ensure the effective implementation of the national strategy to prevent torture and the proper functioning of the NPM. Furthermore, as it is called for in article 22 of the OPCAT, the competent authorities of the State party shall examine the recommendations of the NPM and enter into a meaningful dialogue with it on possible implementation measures. In this connection, a focal point could be named in each of or for all the relevant ministries to follow up on the implementation of the NPM's recommendations and to report to the mechanism in that regard.**

IV. Reform of the national preventive mechanism

28. Although the Optional Protocol leaves it up to the State Party's discretion in which institutional format the NPM should be set up, the Protocol is axiomatic that the NPM must be structured in a manner which fully reflects its provisions. The Subcommittee is encouraged by the opportunity for real improvement which now presents itself with the draft law on Parliamentary Advocates and, in particular, Chapter IV dedicated to the work of the NPM. In this connection, the Subcommittee commends the State party for conveying and coordinating the Working Group on the amendments to the legislative framework of the NPM, which includes a significant number of national and international experts, as well as the representatives of different Ministries and civil society.

29. The present remarks were formulated after the Subcommittee's visit to the country and on the basis of the document provided by the Ministry of Justice on 4 October 2012 (Annex III). These remarks should be considered in addition to the previous comments made by the Subcommittee in Chapters II and III of the present report.

30. The Subcommittee welcomes the draft amendments contained in articles 48.2 and 45.1, providing for a separate budget of the NPM and involving the Parliamentary Human Rights Commission into the election procedure of the NPM members respectively.

31. Having said that, the Subcommittee believes that a number of changes have to be made, in order to bring the present draft law in full conformity with the Optional Protocol:

(a) Principles of impartiality, objectivity and confidentiality of the Council's work have to be introduced in the text;

(b) Criteria for selection of Council's members by the Parliamentary Commission for Human Rights have to be further developed, either in the text of the draft law or in the separate document of Rules of Procedure;

(c) Additional clause on incompatibilities and conflict of interests should be introduced in the law or regulated by Rules of Procedure;

(d) Length of mandate of the NPM's members was set up to 3 years (article 45.3). Possibility of reappointment for second and last mandate could be added, in order to retain persons with accumulated experience in the field of prevention of torture;

(e) Requirement of work experience of at least 3 years for a member of the Council should be reviewed with a view to increasing it. (Article 46 (c));

(f) It is unclear whether the law requires all members of the Council to be representatives of civil society (Article 45.1 is not in line with the selection criteria stated in article 46);

(g) Role, duties and limitations of the Chairperson of the Council have to be enumerated;

(h) Administration of the budget has to be a collegial decision of the Council, in accordance with its mandate, priorities and strategic annual planning;

(i) The law should include obligation for the NPM to present to the authorities and the Parliament its Annual Reports (article 23 OPCAT);

(j) It is unclear from the draft law whether the roster of external experts, currently used by the Centre for Human Rights on an ad hoc basis, will continue to be used by the NPM;

(k) Communication/coordination mechanism between monthly meetings has to be elaborated;

(l) Three days deadline for authorities to submit a response, describing measures taken further to the visit of the NPM, appears insufficient, as it is unlikely that significant changes/commitments would take place in such a short time.

V. Final recommendations

32. The Subcommittee recalls that prevention of torture constitutes an on-going and wide-ranging obligation of the State party.[7] In this connection, the Subcommittee welcomes the review of the legislative framework and further development and refinement of working methods of the NPM. The Subcommittee further requests that the State Party keep it informed on the reform process and other relevant developments regarding the NPM, in order to assist the State party in fulfilling its obligations under the Optional Protocol.

33. The Subcommittee recommends that, given the preventive effect of such a measure, the State make this report public. In addition, the Subcommittee recommends that the State party distribute this report among the relevant institutions in all branches of government.

34. Once again, the Subcommittee stands ready to assist the Republic of Moldova as far as it is able in the common goal of prevention of torture and ill-treatment with a view to translating commitments into the reality.

[7] CAT General Comment No.2, CAT/C/GC/2, paras. 3 and 4.

Annexes

Annex I

List of senior officials and other persons with whom the Subcommittee met

National authorities

Ministry of Justice

Oleg Efrim, Minister of Justice

Veaceslav Ceban, Head of the Penitentiary Institutions Department

Ministry of Foreign Affairs

Corina Calugaru, Head of the Global Affairs and Human Rights Division, General Directorate for Multilateral Cooperation, Ministry of Foreign Affairs and European Integration

Ministry of Health

Gheorghe Ţurcanu, Deputy Minister of Health

Ministry of Interior

Mircea Ciobanu, deputy director of the General Directorate police and public order of the Department Police

Legislative branch

Elena Frumosu, Member of Parliament, Member of the Parliamentary Commission on Human Rights

General Prosecutor Office

Inga Furtună, prosecutor, Section on combating torture, General Prosecutor's Office

Cornelia Vicleanschi, prosecutor, General Prosecutor's Office

Igor Balmuş, Section of control of execution of sentences and places of detention, General Prosecutor's Office

Pascal Denis, representative of the Anticorruption Center

National preventive mechanism

Anatoli Munteanu, Parliamentary advocate, Director of the Centre for Human Rights, Head of the National Preventive Mechanism

Olga Vacarciuc, Advisor to the Parliamentary advocate, Center for Human Rights

Ion Guzun, Member of the Consultative Council

Oxana Gumenaia, Member of the Consultative Council

Alexandru Covalischii, Member of the Consultative Council

Ion Schidu, Member of the Consultative Council

United Nations system

Nicola Harrington-Buhay, Resident Representative, United Nations Development Programme (UNDP)

Evghenii Golosceapov, Programme Analyst, Justice and Human Rights, United Nations Development Programme

Civil society

Memoria

Promo-Lex

Amnesty International

CIDO (Centre of Information on Human Rights)

Annex II

List of places of deprivation of liberty visited by the Subcommittee

Penitenciary Institution No. 13, Chisinau

Public Medical Institution Psychiatric Hospital (PMI Psychiatric Hospital), Chisinau

Annex III

Text of the draft Chapter IV "National Preventive Mechanism", as transmitted by the State party on 4 October 2012

"Chapter IV

National preventive mechanism of torture

Art.42 - (1) In order to protect persons against torture and other cruel, inhuman or degrading treatment, under the Ombudsman Office to be created a Council for the Prevention of Torture (hereinafter Council) as the national preventive mechanisms of torture.

Article 43 - (1) The Council:

a) regularly examine the treatment and conditions of detention of persons deprived of their liberty in order to strengthen their protection against torture and ill-treatment;

b) propose recommendations to authorities in order to improve treatment and conditions of detention of persons deprived of their liberty and to prevent torture and other ill-treatment, taking into account relevant rules of international law and international human rights standards;

c) submit proposals for improvement authorities legislation or draft legislation aimed at competence;

(2) Members conduct regular or unannounced visits to places where they are or may be persons deprived of liberty, placed at the disposal of a state body or according to its decision, consent or tacit agreement.

(3) Visits performed by the Council are unannounced. Council may decide to notify authorities about the visits in exceptional cases and if the purpose of the visit could be achieved in a more efficient way.

(4) In order to perform independently the function of preventing torture, members of the Council will benefit of:

a) the rights provided for in Article 24 paragraphs b)-g);

b) the right to work, to transmit information and to meet the UN Sub-Committee against Torture and the European Committee for the Prevention of Torture.

(5) Council members do not have the right to disclose confidential information and personal data of a person deprived of liberty without his consent, where the information was obtained during preventive visits.

(6) All public authorities and institutions are obliged to cooperate with the Council and take all measures within its power to assist the Council in exercising its functions.

(7) It is prohibited to order, apply, permit or tolerate any type of sanction, and otherwise harm a person or organization for communicating any information, true or false to Council members and other persons accompanying them, in exercising their function on prevention of torture or other cruel, inhuman or degrading treatment.

Article 44 - For the purposes of this law, deprivation of liberty means any form of placing the person in a public or private detention at the orders of any judicial body, administrative or other body, as a punishment, penalty, measure of constraint, detention, and as a result of dependence on care provided or on any other grounds, place that person hasn't the right to leave on his own initiative.

Article 45 - (1) The composition of the Council is 11 members. Ombudsman and Advocate for child rights protection are ex officio members. Other civil society members are selected on a competitive basis by the parliamentary commission for human rights and interethnic relations in compliance with art. Article 4. (3) - (5).

(2) Members are selected respecting gender balance and the adequate representation of ethnic and minority groups in the country.

(3) The mandate of the Council is 3 years.

(4) The Ombudsman is the legal Chairman of the Council.

Article 46 - Council member may be a person who:

a) has the citizenship of the Republic of Moldova;

b) has a degree in law, medicine, psychology, pedagogy, social work or other relevant professional experience for NPM;

c) have a work experience of at least 3 years;

d) has no criminal record;

e) have a high moral integrity in society.

Article 47 - (1) Membership status of the Council is considered terminated upon expiration of the mandate, as a result of a personal request or in case of death.

(2) Member of the Council may be revoked by a decision of the Parliamentary Committee for Human Rights and Ethnic Relations in circumstances which preclude the execution of the member's mandate or at the request of the Council adopted by a majority of elected members in the event of failure or improper performance of duties. The new Council member performs his duties until the revoked member mandate expires.

Article 48 - (1) The work of the Council is assisted by a specialized division within the Office.

(2) The resources required for the functions of the Council are included in a separate budget line, part of the Office's budget.

(3) Board members receive an allowance in the amount of 10 percent of average salary for a meeting. - *Variant I*

(3) Board members shall receive an allowance for performing it's duties in the rates for allowance equal to 2.5% of the average wage per hour. Conditions and how these benefits will be provided to be established in the Activity Regulation of the Council. - *Version – II*

Article 49 - (1) The Council shall convene meetings once a month. At the request of the President or of at least 3 members, the Council shall be convened in extraordinary session.

(2) The Council is chaired by the President. In the absence of the President, the meeting is chaired by a member designated by him or, where appropriate, by a member chosen at the meeting.

(3) The Council is competent if the majority of members are present.

(4) Decisions of the Council shall be adopted by a majority vote, signed by the president and secretary of the meeting and published on the website of the Office.

Article 50 - (1) Members of the Board shall conduct regular visits to places of detention based on an annual visits plan or on any information received. The annual visit plan is approved at the Council meeting.

(2) Each visit will be attended by at least three members of the Council.

Article 52 - (1) After each visit, the members who performed the visit prepares a report containing observations and recommendations submitted to authorities.

(2) Reports on the visits are adopted by the Council and not later than 30 days after the visit, and submitted to authorities visited. In exceptional circumstances, the period of 30 days can be extended for another 30 days by a decision of the Council.

(3) Within 30 days, the authorities should submit a reply on action taken on the recommendations and observations contained in the report to follow specific terms or supporting causes for not implementing certain recommendations.

(4) In urgent cases, the report shall be submitted to the authorities concerned within three days. Authorities have 3 days to submit a response, presenting in details all measures that have been taken to remedy the situation.

(5) If the authority concerned does not submit reply in time or not take the necessary steps to remedy the situation, the President of the Council shall inform about this fact a higher authority.

(6) Reports on the visits shall be published on the website of the Office together with the response of the authorities or, where appropriate, indicating absence of response by that authority."